

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of

LARRY DALE OWEN, A Former
President and A Former Director
of
River Valley Savings Bank, FSB
Ozark, Arkansas - OTS No. 11025

OTS Order No. DAL-96-25

Dated: October 7, 1996

STIPULATION AND CONSENT TO THE ISSUANCE OF AN
ORDER TO CEASE AND DESIST

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against Larry Dale Owen ("Owen"), a former president and a former director of River Valley Savings Bank, FSB (the "Association"), pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b)¹; and

WHEREAS, Owen desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without admitting or denying that such grounds exist except those as to jurisdiction (as set forth in Section 1, below) which are admitted, hereby stipulates and agrees to the following terms:

1. All references in this Stipulation and Consent and the Order to Cease and Desist to the U.S.C. are as amended.

1. JURISDICTION.

(a) The Association is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b), and Section 2(4) of the Home Owners' Loan Act, 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) Owen, as a former President and a former Director of the Association, is deemed to be an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, 12 U.S.C. § 1813(u), having served in such capacity within 6 years of the date hereof. (See 12 U.S.C. § 1818(i)(3).)

(c) Pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), the appropriate Federal banking agency may issue a cease and desist order against any institution-affiliated party who engages in unsafe or unsound practices in conducting its business and/or violates a law or regulation.

(d) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal banking agency" to maintain an administrative proceeding against such a savings association. Therefore, Owen is subject to the jurisdiction of the OTS to initiate and maintain an administrative proceeding against him pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). The Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue an order to cease and desist where the respondent has consented to the issuance of the order.

2. OTS FINDINGS OF FACT.

The OTS finds that:

(a) As the result of an OTS examination of the Association commenced December 27, 1993, Owen, as chief executive officer of the Association, was placed on notice that the Association had underwriting deficiencies due to documentation weaknesses. After being so placed on notice of the loan underwriting deficiencies, Owen, as chief executive officer of the Association, represented in writing to the OTS that improvements would be made in the area of loan documentation and development of specific underwriting guidelines for each area of lending, specifically with regard to documentation requirements, credit criteria for evaluation of repayment ability, collateral requirements, and loan terms. Following the OTS examination of the Association commenced on December 27, 1993, and prior to January 1, 1995, Owen, as chief executive officer of the Association and despite the written assurances he had provided the OTS to the contrary, led the Association on a program of high-risk lending practices in which loans were typically approved very rapidly and frequently made with poor underwriting caused by the absence of adequate documentation to support such loans, leading to a situation in which a large percentage of the Association's loans outstanding as of December 31, 1994, were poorly underwritten. The OTS examination of the Association, covering the period of December 27, 1993 to December 31, 1994, disclosed the existence of more than 250 violations at the Association of which substantially more than 100 were violations of

the same nature as those which had been cited in the OTS examination commenced December 27, 1993. Included in the underwriting deficiencies at the Association caused by Owen between December 27, 1993 and December 31, 1994, were numerous loans made with one or more of the following deficiencies: no loan application; no financial statement or credit report; no evidence of loan security interest in real estate collateral; no title insurance policy, legal opinion or other evidence as to quality and validity of real estate lien; no evidence of appraisal or evaluation of real estate collateral; no evidence of hazard or builder's risk insurance premiums on real estate collateral; no evidence of inspection of cattle serving as collateral to verify their existence and condition; no documentation of the number and breed of cattle that served as collateral; no documentation with regard to internal loan approval; and no loan purpose statement. Additionally, Owen caused the Association to make various construction loan disbursements without any inspection report as to the state of construction at or near the time of disbursement. Such deficiencies constituted unsafe or unsound practices in conducting the business of the Association and/or violations of law or regulation.

(b) Further, on January 12, 1995, Owen, as chief executive officer of the Association, caused the Association to refinance a severely delinquent mortgage loan. At the time of the refinancing, an affiliate of the Association in which Owen had a very substantial stock investment held a second mortgage on the home and was protected by the refinancing since a failure by the Association to refinance the loan would have left little equity in the home serving it as

collateral. By causing the Association to refinance the loan, Owen both engaged in a conflict of interest and risked a further deterioration of the Association's position as a secured creditor with a first lien. No business reason in the interest of the Association existed to refinance the loan. The refinancing, under those circumstances, constituted an unsafe or unsound practice in conducting the business of the Association and/or a violation of law or regulation.

(c) On several occasions during calendar year 1994, Owen, as chief executive officer of the Association, caused and/or permitted the Association to make loans to executive officers, including one loan to Owen himself, which either were made on terms not prevailing at the time for comparable transactions by the Association with persons not employed by the Association or were made pursuant to credit-underwriting procedures that were less stringent than those prevailing at the time for comparable transactions by the Association with persons not employed by the Association in violation of Section 215.4(a) of Regulation O of the Board of Governors of the Federal Reserve System, 12 C.F.R. § 215.4(a). Such loans, under those circumstances, constituted unsafe or unsound practices in conducting the business of the Association and/or violations of law or regulation.

(d) Owen, as chief executive officer of the Association and while having personal knowledge of common stockholders of the Association and River Valley Bank & Trust, Lavaca, Arkansas ("RVBT") and easy access to stock registers of both the Association and RVBT, a thorough review of which would have led to the conclusion that RVBT

was an affiliate of the Association, certified to the OTS in writing in the course of the OTS examination of the Association that commenced on December 27, 1993, that the Association had no affiliate. Because this matter had been raised with Owen by the OTS in the course of the examination, he knew that this certification could have had the effect that the OTS might not examine the transactions of the Association conducted with or involving RVBT, particularly those which might be covered by Sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. §§ 371c and 371c-1, to the same extent or in the same manner as it would if it had been informed that RVBT was an affiliate. Owen, at the time of his certification, held an investment in excess of \$50,000 in amount in stock of RVBT and, both before and after the certification, received payments in substantial amounts from RVBT. Because the Association was engaged in substantial transactions with RVBT, Owen's certification did or could have prejudiced the interests of the Association's depositors and/or provided Owen with financial gain or other benefit. Such certification to the OTS by Owen was either deliberate or, at the very least, constituted a reckless disregard for the truth, knowing that his action could have an effect on the oversight of the Association, and therefore constituted an unsafe or unsound practice in conducting the business of the Association and/or was a violation of law or regulation.

(e) On August 4, 1993, Owen, as chief executive officer of the Association, originated a loan to a borrower. On September 20, 1993, the Association advanced \$20,000 on that loan by issuance of a cashiers check. That same cashiers check was deposited on

September 21, 1993, directly into the stock escrow account at RVBT, which was the account used to receive funds for purchase of stock of the Association. Stock of the Association was subsequently issued in the name of the borrower with most of such funds used as the purchase price. In the course of the OTS examination of the Association commenced on December 27, 1993, the OTS asked Owen whether funds from any loan of the Association had been used to purchase stock of the Association and, for that purpose, provided Owen with a certification form for his signature. On March 8, 1995, Owen signed a certification which stated that no proceeds from any loan of the Association had been used for the purpose of acquiring Association stock. By Owen's own admission, before signing the certification, Owen spoke with the borrower and read the certification to the borrower, asking him if he could make it. This demonstrates that Owen was, if not knowledgeable that the certification would be inaccurate, at least suspicious that it would be inaccurate. Without doing any substantive investigation into the matter other than discussing the matter with the borrower, Owen signed the certification and provided it to the OTS without bringing this loan to the attention of the OTS, which, if it did not constitute knowingly making a false representation to the OTS concerning a matter within the jurisdiction of the OTS, constituted an omission of a material fact in a written statement to the OTS on a matter within its jurisdiction, in violation of 12 C.F.R. § 563.180(b). In so acting, he knew that the OTS might rely upon his certification in conducting its oversight of the Association. This certification under these circumstances constituted an unsafe or unsound practice in conducting the business

of the Association and/or was a violation of law or regulation.

3. CONSENT.

Owen consents to the issuance by the OTS of the accompanying Order to Cease and Desist ("Order"). He further agrees to comply with its terms upon issuance and stipulates that the Order complies with all requirements of law.

4. FINALITY.

The Order is issued by the OTS under the authority of Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director or designee for the Midwest Region, OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

5. WAIVERS.

(a) Owen waives the right to a written notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), and further waives any right to seek judicial review of the Order, including any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order.

(b) Owen also waives any and all claims for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412, or otherwise.

6. AGREEMENT FOR CONTINUING COOPERATION.

Owen agrees that, at the OTS's request, on reasonable notice and

without service of a subpoena, he will provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding related to any investigation, litigation or other proceeding maintained by the OTS relating to the Association, its holding companies (if any), its subsidiaries (if any), or its institution-affiliated parties, except that Owen does not waive any privilege against self-incrimination under the Fifth Amendment of the United States Constitution. If Owen invokes a privilege against self-incrimination under the Fifth Amendment of the United States Constitution with respect to any matter about which the OTS inquires or the production of any document requested by the OTS and the OTS obtains a grant of immunity pursuant to 18 U.S.C. § 600 et seq., Owen agrees, consistent with any such grant of immunity, to provide discovery and testify truthfully at any deposition and at any judicial, administrative or investigative proceeding on the matter for which immunity is given.

7. INDEMNIFICATION.

Owen shall neither cause nor permit the Association (or any subsidiary thereof) to incur, directly or indirectly, any expense for any legal (or other professional) services incurred relative to the negotiation and issuance of the Order to Cease and Desist, nor obtain any indemnification (or other reimbursement) from the Association (or any subsidiary thereof) with respect to such amounts. Any such payments received by or on behalf of the Respondent in connection with this action shall be returned to the Association.

8. OTHER GOVERNMENT ACTIONS NOT AFFECTED.

(a) Owen acknowledges and agrees that the consent to the entry

of the Order are for the purposes of resolving this cease and desist action, that such cease and desist action pertains solely to the OTS findings of fact set forth above, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of Owen that arise pursuant to to this action or otherwise, and that may be or have been brought by any government entity.

(b) Owen further acknowledges and agrees that his consent to the entry of the Order does not resolve, release, discharge, compromise, settle, dismiss, or in any way affect any claim or proceeding which may be or has been brought by the Association, including its successor(s) in interest.

(c) By signing this Stipulation and Consent to the Issuance of an Order to Cease and Desist, Owen agrees that he will not assert this proceeding, his consent to the entry of the Order, the affirmative relief provided by the Order and/or the entry of the Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other federal or state governmental entity. The OTS is of the view that the affirmative relief provisions of the Order are remedial and not punitive in nature, and Owen does not and will not contest this position.

WHEREFORE, Owen executes this Stipulation and Consent to the Issuance of an Order to Cease and Desist, intending to be legally bound hereby.

By:


LARRY DALE OWEN

Date: 9-30-96

Accepted by:

Office of Thrift Supervision


Frederick R. Casteel
REGIONAL DIRECTOR
Midwest Region

Date: 10-7-96

COPY

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LARRY DALE OWEN, A Former)
President and A Former Director)
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River Valley Savings Bank, FSB)
Ozark, Arkansas - OTS No. 11025)
)
)

OTS Order No. DAL-96-25

Dated: October 7, 1996

ORDER TO CEASE AND DESIST

WHEREAS, Larry Dale Owen ("Owen") has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist ("Stipulation"); and

WHEREAS, Owen, by his execution of the accompanying Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist ("Order"), pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIC"), 12 U.S.C. § 1818(b); and

WHEREAS, the Director of the Office of Thrift Supervision ("OTS") has delegated to each of the Regional Directors of the OTS the authority to issue Orders to Cease and Desist on behalf of the OTS where respondents have consented to the issuance of the Orders;

NOW, THEREFORE, IT IS ORDERED that:

1. Owen shall cease and desist from any violation of, or aiding and abetting any violation of, any Federal banking law or regulation, including but not limited to Section 563.180(b) of the OTS regulations, 12 C.F.R. § 563.180(b), and Regulation O of the

Board of Governors of the Federal Reserve System, 12 C.F.R. Part 215.

2. Owen shall not, without the prior written approval of the Regional Director of the Midwest Region of the OTS, or his successor or designee, seek or accept any position as an officer, director or other Institution-Affiliated party with River Valley Savings Bank, FSB, Ozark, Arkansas.

IT IS FURTHER ORDERED that:

3. REFINANCING DELINQUENT LOANS.

Whenever Owen is an Institution-Affiliated Party of a Banking Institution, he shall not refinance, or cause to be refinanced, any delinquent loan without the written authorization of the Appropriate Federal Banking Agency for that Banking Institution.

4. REPRESENTATIONS TO FEDERAL BANKING AGENCIES.

(a) Whenever Owen is an Institution-Affiliated Party of a Banking Institution and makes a representation to the Appropriate Federal Banking Agency for such Banking Institution concerning any matter within its jurisdiction, Owen shall be truthful, shall not omit any material fact, and shall inform such Appropriate Federal Banking Agency of any doubt, question, or qualification of which he is aware regarding that representation.

(b) Whenever Owen is an Institution-Affiliated Party of a Banking Institution and is requested to do so by the Appropriate Federal Banking Agency for such Banking Institution, Owen shall place any representation to such Appropriate Federal Banking Agency concerning any matter within its jurisdiction in the form of a sworn affidavit, notarized and subject to the penalties of perjury. Each such affidavit shall contain a representation by Owen that his

representations in the affidavit have not omitted any material fact.

5. CREDIT UNDERWRITING AND DOCUMENTATION.

Whenever Owen is an Institution-Affiliated Party of a Banking Institution, he shall not cause such Banking Institution to make any loan until and unless he has ensured that such loan is in full compliance with all applicable laws, regulations, and guidance and policies of the Appropriate Federal Banking Agency for that Banking Institution as to the underwriting and documentation of such loan (including but not limited to the credit underwriting standards set forth in the Interagency Guidelines Establishing Standards for Safety and Soundness, and with general principles of safety and soundness. In doing so, Owen shall take into consideration the risk(s) associated with such loan.

6. FIDUCIARY DUTIES.

Whenever Owen is an Institution-Affiliated Party of a Banking Institution, he shall fulfill his fiduciary duties to such Banking Institution, including his fiduciary duties of loyalty, candor and care.

7. CONFLICTS OF INTEREST.

At any and all times in which Owen serves as an Institution-Affiliated Party of a Banking Institution, he shall comply with the following restrictions:

(a) Owen shall, at all times, avoid placing himself in a position which creates, leads to, or could lead to, a conflict of interest or the appearance of a conflict of interest with the Banking Institution. Owen shall, at all times, avoid placing his own personal interests above those of the Banking Institution.

(b) If, at any time, Owen is uncertain whether Section 7(a) of the Order is at issue, or if Owen is uncertain about his duties arising from Section 7(a) of the Order, he shall obtain, at his own expense, the written advice of Independent Counsel regarding his duties and responsibilities. Owen shall abide by the written advice of Independent Counsel in such matter(s).

(c) Owen shall provide both the Appropriate Federal Banking Agency of the Banking Institution and the board of directors of the Banking Institution with a copy of the written advice he has obtained from Independent Counsel pursuant to Section 7(b) of the Order promptly after receipt of such advice and in no case later than ten days following receipt of said written advice.

8. ABSTENTIONS.

When serving as an Institution-Affiliated Party of a Banking Institution, Owen shall abstain from voting on, and shall not participate in any manner in, consideration of any form of decision or approval, including those pertaining to any loan, investment, or other transaction, by which any benefit might directly or indirectly flow to: (a) Owen directly; (b) any Affiliated Business; or (c) any entity in which Owen or any member of his Immediate Family has any financial interest, directly or indirectly, legally or beneficially. Owen shall cause such abstention or non-participation to be specifically recorded in the Banking Institution's corporate records, including in board minutes. In addition, Owen shall fully disclose to the board of directors of the Banking Institution the reason for such abstention or non-participation, including the nature of any conflict of interest, potential conflict of interest, or

appearance of conflict of interest, and shall cause such disclosure to be recorded in the Banking Institution's corporate records.

9. DISCLOSURE.

When serving as an Institution-Affiliated Party of a Banking Institution, Owen shall make full disclosure, on behalf of himself, any Affiliated Business, and his Immediate Family (collectively, the "Affiliate Group"), to the board of directors regarding all loans, investments, partnership interests, stock ownership, and other business relationships between the Affiliate Group and persons or entities which are borrowers, depositors, board members, officers, and/or Institution-Affiliated Parties of the Banking Institution. Such full disclosure shall be made promptly, and in no event later than the day he becomes an Institution-Affiliated Party of a Banking Institution or fifteen days following execution of the Order (whichever is later), and annually thereafter. Furthermore, Owen shall have a continuing obligation to update the disclosure promptly in the event of a change in circumstances, and in no event later than fifteen days following the change in circumstances. Owen shall cause each such disclosure to be recorded in the Banking Institution's corporate records.

10. NOTICE TO BANKING INSTITUTION.

Prior to accepting any position as an Institution-Affiliated Party of a Banking Institution, Owen shall provide a copy of the Order (including the Stipulation) to the chief executive officer and all directors of such Banking Institution and receive from each such chief executive officer or director a written acknowledgment of receipt of such copy.

11. NOTICE TO REGULATORS.

Prior to accepting any position as an Institution-Affiliated Party of a Banking Institution, Owen shall provide written notice to the OTS and to each Appropriate Federal Banking Agency of such Banking Institution of his intention to accept a position in such Banking Institution, identifying such Banking Institution by name. Such written notice shall include written certification by Owen that he has complied with Section 10 of the Order. If so requested by the Appropriate Federal Banking Agency for such Banking Institution, Owen shall submit to it the written acknowledgments required by Section 10 within ten days of such request.

12. RESPONSES TO REQUESTS.

Owen shall promptly and appropriately respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

13. DEFINITIONS.

For purposes of this Order:

(a) "Affiliate" shall have the meaning set forth at 12 C.F.R. § 574.2(d);

(b) "Affiliated Business" means any business in which (i) Owen and/or any member of his Immediate Family is a controlling owner, directly or indirectly, legally or beneficially; or (ii) Owen or any member of his Immediate Family serves or acts, by function or title, as a director, officer, partner, or other similar management official;

(c) "Appropriate Federal Banking Agency" shall have the

meaning set forth at 12 U.S.C. § 1813(q);

(d) "Banking Institution" means any of the following: any "insured depository institution", as that term is defined at 12 U.S.C. § 1813(c)(2) (including but not limited to any bank or savings association the deposits of which are insured by the Federal Deposit Insurance Corporation); any direct or indirect subsidiary of an "insured depository institution" (as that term is defined at 12 U.S.C. § 1813(c)(2)), whether wholly or partly owned; any "insured credit union" within the meaning of 12 U.S.C. § 1752(7); any "savings and loan holding company" within the meaning of 12 U.S.C. § 1467a(a)(1); any "bank holding company" within the meaning of 12 U.S.C. § 1841; and any direct or indirect subsidiary of any such savings and loan holding company or bank holding company, whether wholly or partly owned;

(e) "Company" shall have the meaning set forth at 12 C.F.R. § 574.2(f);

(f) "Control" or "Controlled" shall have the meaning set forth at 12 C.F.R. Part 574;

(g) "Immediate Family" shall have the meaning set forth at 12 C.F.R. § 574.2(j);

(h) "Independent Counsel" means an attorney, licensed to practice law in the state in which the Banking Institution does business, who is in no way affiliated with the Banking Institution, with Owen, with any member of Owen's Immediate Family, or with any Affiliated Business;

(i) "Institution-Affiliated Party" shall have the meaning set forth at 12 U.S.C. § 1813(u);

(j) Any terms used herein that are defined in other sections of this Order (including the Stipulation incorporated herein) shall have the meanings ascribed to them in such paragraphs; and

(k) Except as otherwise expressly provided in this Order, any terms used herein that are defined in the Home Owners' Loan Act or the Federal Deposit Insurance Act shall have the meanings ascribed to them in such statutes. See, e.g., 12 U.S.C. Part 1813.

14. STIPULATION.

The Stipulation is made a part hereof and is incorporated herein by this reference.

15. EFFECTIVENESS OF ORDER.

This Order shall become effective on the date it is issued, as shown in the caption hereof. This Order shall remain in effect until it is terminated, modified, or suspended, which may occur only by formal written action of the OTS, acting by and through its Regional Director, or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: *F. R. Casteel*
Frederick R. Casteel
Regional Director
Midwest Region